IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.MC.No. 2850 of 2006()

CC.2/2006 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM
CRIME NO.211/03 OF THE MALAPPURAM POLICE STATION

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PETITIONER: THIRD ACCUSED

MUJEEB ERAMBATH, SON OF ABDU HAJI,
VADAKKAMKARA KIZHAKKEKULAMBU, P.O. VADAKKAMKARA,
VIA MANKADA, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: COMPLAINANT/STATE

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1. THANKAYATHIL SAIDALAVI,
S/O.MAMMU HAJI, VADAKKAMKARA, MAKARAPARAMBA,
MALAPPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. NO.2850 OF 2006

Dated this the 9th day of July, 2007

ORDER

The short grievance of the petitioner is that he is left to face the predicament of indictment in two cases on allegations regarding the same alleged incident – one in a final report filed by the police and the other a private complaint filed by the injured. The short contention of the petitioner is that the allegations in the private complaint and the police charge case are not congruent. The mere incongruency between the final report filed by the police and the private complaint filed by the de facto complainant is, according to me, no reason for the court to invoke the powers under Sec.482 of the Cr.P.C. and quash either or both cases. The learned counsel for the petitioner, after discussions at the Bar, makes only a short request. She prays that the learned

Magistrate may be directed to consider the petitioner's plea for discharge under Sec.239 of the Cr.P.C. Needless to say, the learned Magistrate has got to do that. The Code specifically mandates that an indictee can claim premature termination of the proceedings against him by invoking the powers of discharge of the court under Sec.239 of the Cr.P.C. The petitioner can certainly claim discharge and attempt to persuade the learned Magistrate to accept his claim for discharge.

2. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge